

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

BRITTANY STONE,	:	Case No.: 2:17-cv-826
	:	
Plaintiff,	:	JUDGE:
	:	
v.	:	MAGISTRATE:
	:	
FOOD CONCEPTS INTERNATIONAL, LP, ABUELO'S INTERNATIONAL LP, CHINESE KITCHEN, LLC,	:	
	:	
Defendants.	:	
	:	

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendants Food Concepts International, LP, Abuelo's International LP, Chinese Kitchen, LLC (collectively "Defendants") hereby remove this action to the United States District Court for the Southern District of Ohio, Eastern Division, from the Franklin County Court of Common Pleas. In support of this Notice and pursuant to 28 U.S.C. § 1446, Defendants state the following:

1. On or about September 12, 2017, an action was commenced in the Franklin County Court of Common Pleas, titled Brittany Stone v. Food Concepts International LP, et al. and assigned Case No. 17-CV-008225. Plaintiff requested that Defendants waive service pursuant to Civ.R. 4(D) and sent Defendants a copy of the complaint on September 12, 2017.
2. Defendants are filing herewith a full copy of the Court file, which includes the Complaint and discovery requests, attached hereto as **Exhibit A**¹.

¹ Please note that as an attachment to Plaintiff's complaint in the Franklin County Court of Common Pleas, Plaintiff attached a "Consent to Join Action" indicating her desire to join the civil action already pending in the United States District Court for the Southern District of Ohio. Presumably this action is the action known as Stephenson v. Food Concepts International LP, et al., Case No. 2:16-cv-01029. Because Plaintiff's "Consent to Join Action" was not filed in the appropriate case, it has no legal effect. If Plaintiff intended to merely join the already pending federal action, her filing with the state court was frivolous and only intended to cause Defendants to expend legal fees to remove this action to federal court.

3. Defendants have not been served with any other papers, pleadings, or orders in this matter except as set forth herein.

4. Defendants have not filed an answer or otherwise responded to the Complaint. This Notice of Removal is filed within thirty (30) days of Defendants' receipt of Plaintiff's Complaint setting forth her claims for relief, and is timely filed under 28 U.S.C. § 1446(b).

5. Plaintiff brought federal law claims for violation of the Fair Labor Standards Act, 29 U.S.C. §§ 203, 206, and 216. Plaintiff also brought state law claims for the alleged non-payment of wages, violations of R.C. 4113.15, non-payment of overtime wages, under-payment of wages, for re-payment of wages wrongfully withheld pursuant to an illegal tip pool sharing arrangement, and violation of the Ohio Constitution Art. II § 34a (record-keeping violation). (*See generally* Complaint.) Plaintiff requests that she be awarded an amount in excess of \$25,000, plus the payment of back wages, injunctive relief, liquidated and treble damages, pre- and post-judgment interest, reasonable attorneys' fees, and costs, and punitive damages.

6. This Court has original subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, the federal-question statute, because Plaintiff seeks monetary recovery for violations of the federal Fair Labor Standards Act.

7. In addition, this Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because complete diversity of citizenship exists between Plaintiff and Defendants, provided Plaintiff has stated a claim and further that Plaintiff has not caused any procedural defects to have been made.

8. Upon information and belief, Plaintiff is a resident of New Albany, Ohio. (Complaint at ¶ 6.)

9. Defendant Food Concepts International, LP, Abuelo's International, LP, and Chinese Kitchen, LLC are corporations organized and incorporated under the laws of the State of Texas with their citizenship and principal place of business in Texas. (Complaint at ¶¶ 15-17.) Thus, complete diversity of citizenship exists between all parties in this action.

10. Plaintiff demands compensatory damages in an amount in excess of Twenty-Five Thousand Dollars, plus additional back wages, attorneys' fees, costs, and expenses. (Compl. at Wherefore Paragraph.) Based on the foregoing and a careful review of the Complaint, Defendants have a reasonable and good faith belief that Plaintiff's claimed damages and therefore the amount in controversy, more likely than not exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

11. Venue of this removal action is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division corresponding to the place where the state court action was pending.

12. This action is not an action described in 28 U.S.C. § 1445.

13. Written notice of the filing of this Notice of Removal has been served upon Plaintiff.

14. A true and accurate copy of this Notice of Removal has been filed with the Clerk of Franklin County Court of Common Pleas.

WHEREFORE, Defendants hereby give notice that the above action initiated in the Franklin County Court of Common Pleas is hereby removed to the United States District Court for the Southern District of Ohio for the reasons set forth above.

Respectfully submitted,

/s/ Faith C. Whittaker

Faith C. Whittaker (0082486)
Susan H. Jackson (0090924)
DINSMORE & SHOHL LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202
Phone: (513) 977-8200
Fax: (513) 977-8141
Email: faith.whittaker@dinsmore.com

-and-

Janay M. Stevens (0090515)
DINSMORE & SHOHL LLP
191 W. Nationwide Blvd, Suite 300
Columbus, Ohio 43215
Phone: (614) 628-6945
Fax: (614) 628-6890
Email: janay.stevens@dinsmore.com
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: Wesley T. Fortune, Fortune Law Ltd, 4417 Carroll Southern Road, Carroll, Ohio 43112, wfortune@wtflegal.com.

/s/ Faith C. Whittaker

Faith C. Whittaker (0082486)